

E-FILED on 9/17/09

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CASS WILSON, Individually and On Behalf of  
All Others Similarly Situated and the General  
Public,

Plaintiffs,

v.

HEWLETT-PACKARD COMPANY,

Defendant.

No. C-09-2253 RMW

ORDER DENYING PLAINTIFF'S MOTION  
TO REMAND AND GRANTING  
DEFENDANT'S MOTION TO DISMISS

[Re Docket Nos. 9 and 11]

Plaintiff Cass Wilson's motion to remand and defendant Hewlett-Packard Company's Motion to Dismiss came on for hearing before the court on August 28, 2009. Having considered the papers submitted by the parties and the arguments of counsel, and for good cause appearing, plaintiff's motion to remand is denied and defendant's motion to dismiss is granted.

**1. Motion to Remand**

Plaintiff contends that removal was untimely, filed 129 days after service of the Complaint. Defendant contends that removal was timely, within 10 days after service of the First Amended Complaint which contained a new allegation that all of HP's dv, zd, ze, zt, zv and zx laptops contained the alleged defect at the time they were sold (as opposed to the original complaint's

1 allegation that an "abnormally high" number of such laptops were defective), which triggered  
 2 defendant's investigation and subsequent determination that the amount in controversy exceeded \$5  
 3 million. Notably, both the Complaint and FAC contain affirmative allegations designed to defeat  
 4 diversity – that each plaintiff's damages were less than \$75,000 and that the total is less than \$5  
 5 million. In view of these allegations, defendant had no duty to investigate the jurisdictional facts.  
 6 *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689 (9th Cir. 2005); *Bullard v. Allstate Ins. Co.*, 2006  
 7 U.S. Dist. LEXIS 94390. Removal was timely and the motion to remand is accordingly denied.

## 8 **II. Motion to Dismiss**

9 This case involves an alleged design defect in HP's laptop computers, specifically, that  
 10 during ordinary use, the attachment of the power jack to the motherboard causes the solder  
 11 connection to be interrupted, ultimately resulting in the failure of the laptop. Plaintiff's laptop failed  
 12 for this reason after the expiration of his two-year warranty. Plaintiff seeks to bring a class action,  
 13 and his First Amended Complaint contains three causes of action: violation of California's Unfair  
 14 Competition Law (Business and Professions Code §17200, et seq.); violation of the California  
 15 Consumer Legal Remedies Act (Civil Code §1750 et seq.); and breach of warranty. Defendants  
 16 seek dismissal of each claim.

17 There is no CLRA claim on the facts pleaded. *See Daugherty v. American Honda Motor*  
 18 *Co.*, 144 Cal.App.4th 824 (2006); *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir.  
 19 2008); *Hoey v. Sony Enters. Inc.*, 515 F.Supp.2d 1099 (N.D. Cal. 2007); *Ostreicher v. Alienware*  
 20 *Corp.*, 544 F.Supp.2d 964 (N.D. Cal. 2008). Plaintiff relies on *Falk v. General Motors Corp.*, 496  
 21 F.Supp.2d 1088 (N.D. Cal. 2007), as support for imposing a duty to disclose product defects where  
 22 the manufacturer has exclusive knowledge of the defect, and the failure to make such disclosure is  
 23 actionable under the CLRA. *Falk* was addressed at length in *Ostreicher*, however, where Judge  
 24 Patel cogently analyzed *Falk* both in light of the safety concerns which were integral to that decision  
 25 as well as in light of the general policy implications that would result from recognizing a broad duty  
 26 to disclose, effectively eliminating warranties short of the full useful life of the product. The court  
 27 finds Judge Patel's reasoning persuasive and notes that the instant case does not implicate safety  
 28 concerns as were involved in *Falk*. The CLRA claim is dismissed.

1 The breach of warranty claim also fails. *See Clemens v. DaimlerChrysler Corp.*, 534 F.3d  
2 1017, 1022 (9th Cir. 2008); *Dougherty v. American Honda Motor Co.*, 144 Cal.App.4th 824 (2006).  
3 Plaintiff's argument that the limitation of the warranty is unconscionable is not convincing. A two-  
4 year consumer product warranty is unremarkable and no facts suggests that it is unconscionable.  
5 Limitation on warranties is authorized by the California Uniform Commercial Code §2316 and have  
6 been routinely upheld. *See Brothers v. Hewlett-Packard Co.*, 2006 WL 3093685 (N.D. Cal. 2006).  
7 The claim is dismissed.

8 Finally, with regard to the Unfair Competition Law claim, the court notes that the claim  
9 survived demurrer in state court, before the case was removed to federal court. This suggests that  
10 defendant should not be able to challenge the claim again on a second motion to dismiss. On the  
11 other hand, the claim as pleaded is deficient. Specifically, the UCL claim is based to some degree  
12 upon violations of the CLRA, which have now been dismissed. It is also based, to a large degree, on  
13 allegations of misrepresentation and deceit. The claim is not pleaded with the requisite particularity  
14 required by Rule 9(b). For example, Paragraph 77, identifies ten express statutory violations by  
15 citation to the statute, without supporting allegations regarding how each statute was violated. More  
16 is required to fairly inform defendant of the allegations against which it will be required to defend.  
17 Additionally, to the extent that the claim is based on alleged public misrepresentations made by HP,  
18 the representations identified in the complaint amount to non-actionable puffery – that the laptops  
19 were designed to "perform ... flawlessly," provided "easy-to- use technology" and that they "enable  
20 greater mobility and resource sharing within homes or small offices." FAC ¶30. Similar statements  
21 have been found to be non-actionable. *See Ostreicher*, 544 F.Supp.2d at 973-74; *Brothers*, 2006 WL  
22 3093685 at \*4-5; *Long v. Hewlett-Packard Co.*, 2007 WL 2994812 at \*7 (N.D. Cal. 2007).

23 Defendant's other argument is unconvincing – that the UCL does not apply to claims by an  
24 out-of-state plaintiff – because the Amended Complaint alleges that defendant's actions and  
25 representations emanated from California. FAC ¶13. At the pleading stage, this is sufficient. If  
26 proven, the California UCL may constitutionally apply to the claims of out-of-state plaintiffs.  
27 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224 (2001).  
28

Accordingly, plaintiff's claim under California's Unfair Competition Law is also dismissed.

**III. ORDER**

For the foregoing reasons, the court denies plaintiff's motion to remand and grants defendant's motion to dismiss. Plaintiff shall have twenty days leave to amend.

DATED: 9/17/09



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RONALD M. WHYTE  
United States District Judge

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10 Counsel are responsible for distributing copies of this document to co-counsel that have not  
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15 Dated: 9/17/09

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Chambers of Judge Whyte